



Measures on Chinese Products in Indonesia during the Covid-19 Pandemic: Why was Anti-Dumping Action Imposed?

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Abstract

During the Covid-19 pandemic, the Government of Indonesia (GoI) issued policies to keep the situation under control, particularly in the trade sector, with the goal of protecting the state from fraudulent acts of business actors dumping practices. The Indonesian Anti-Dumping Committee (KADI) has investigated Chinese products that cause harm to domestic products, namely Lysine and Hot Rolled Coil of Another Alloy. This article discusses the implementation of anti-dumping action conducted by the KADI, and the challenges that are faced in the performance of anti-dumping action. It is based on normative legal research that applies statutory and conceptual approaches. The results show that KADI's scientific investigation succeed in proving the causal link between certain imported Chinese products and the injury in Indonesian local industries. There are three challenges faced by KADI in investigating the anti-dumping action. First, the Work From Home system hampered them from collecting the data. Second, a lack number of capable staff to investigate the evidence of dumping in Indonesia. Third, the Regulation of Minister of Finance No. 103/PMK.010/2020 suspend the import duties on all imported products that enter the Indonesian market from September, 22 until December 31, 2020.

Keywords: Anti-Dumping; Chinese products; Covid-19 pandemic; Indonesia, Trade.

1. INTRODUCTION

1.1. Background

The World Trade Organization (WTO) is an inter-governmental organization that only confers legal standing to its members in the organization.¹ Anti-dumping is an action to implement specified duty on import goods in case the import products create or intimidate injury or materially retard the development in markets of domestic industries.² It is governed by Article VI of the General Agreement on Tariffs and Trade (GATT) 1994, which is further explained in the Agreement on Implementation of

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¹ See Bernard M. Hoekman and Petros C Mavroidis. *Law, Economic, Politics*, Second Edition (London: Routledge, 2016), 3.

² WTO, "Technical Information on antidumping," https://www.wto.org/english/tratop_e/adp_e/adp_info_e.htm

that Article, generally referred to as the Anti-Dumping Agreement.³ The Agreement provides for anti-dumping action only if domestic industries suffer material injury because the price of the importing products that enter the country is lower than the price of the same product that is sold in its origin country,⁴ and it will harm the domestic industries that produce like products.⁵

In this discussion, the continued spread of Covid-19 in Indonesia forces the Government of Indonesia (GoI) to issue a slew of infectious disease policies.⁶ In responding to and controlling this situation, the GoI issued policies in the trade sector in terms of import products to protect the state from fraudulent acts of business actors dumping practices.

The agency that has a role in maintaining the stability of trading imported products from price dumping is the Indonesian Anti-Dumping Committee or *Komite Anti Dumping Indonesia* (KADI). The committee conducts its role with the aid of early data, such as dumping of imported goods number, losses, and complaints from the business actors in Indonesia. Many countries have imported products to Indonesia, one of which is China as the producer and exporter of various dumped products to the Indonesian market. Before KADI can impose anti-dumping action on the Chinese imported goods, it should notify the Indonesia Minister of Trade that KADI⁷ would investigate those products. The products are Lysine and Hot Rolled Coil of Another Alloy Steel (HRC Alloy Steel). Moreover, KADI should gather sufficient evidence to investigate the anti-dumping on Chinese

³ Idha Mutiara Sari, "Dispute Settlement of Anti Dumping Legal Aspect In Indonesia Based on GATT/THE WTO Provisions (Allegations Case Study of Dumping Wood Free Copy Paper Between South Korea and Indonesia)," *Lampung Journal of International Law* 2, no.2 (2020): 88.

⁴ Sherzod Shadikhodjaev, "Non-Market Economies, Significant Market Distortions, and the 2017 EU Anti-Dumping Amendment," *Journal of International Economic Law* 21, no. 4, (2018): 885.

⁵ "Like products" are a subset of products that are directly competitive or substitutable. See WTO, "Directly Competitive or Substitutable Products," https://www.wto.org/english/tratop_e/dispu_e/repertory_e/d1_e.htm. See also first sentence of Article III. 2 of the GATT 1994: "Products from one contracting party's territory imported into the territory of another contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products." Further, the following four factors are considered when determining "like products": (1) the properties, nature, and quality of the product, (2) the end uses of the product, (3) consumer tastes and habits, and (4) tariff classification, see WTO, Article III National Treatment on Internal Taxation and Regulation https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art3_e.pdf.

⁶ See discussion regarding the Indonesian policy on Covid-19 in I Made Arya Utama, "Do Indonesian Laws and Policies on Covid-19 Countermeasures Action Reflect Legality?," *Udayana Journal of Law and Culture* 4, no. 2 (2020): 212.

⁷ KADI is assigned to handle problems related to efforts to overcome import of dumping goods and goods containing subsidies. See Regulation of the Minister of Trade No. 33/M DAG/PER/6/2014 concerning Organization and Work Procedure of the Indonesian Anti-Dumping Committee, Art. 2.

products as the first step to protecting national industries during the Covid-19 pandemic.⁸

The implementation of anti-dumping in Indonesia has faced barriers during the Covid-19 pandemic, especially since the GoI carried out the Work From Home (WFH) policy. Such policy has restrained the KADI from exercising their responsibilities on the field, and the staffs are still having difficulties providing additional data related to losses suffered. Indonesia is one of the countries that issued many policies in trading relations, one of them is temporary removing tariffs to ensure domestic demand stocks remain stable during the Covid-19 pandemic,⁹ which results in an increased demand for the chosen products, while there is a risk that restrictive trade action will become permanent.¹⁰ Besides that, the anti-dumping action is one of the policies issued by the GoI.¹¹ The situation of the Covid-19 pandemic made the government could apply it for national industries protection,¹² as the WTO allows its member states to enforce trade remedies or trade defense action, such as dumping.¹³

1.2. Research Problem

One of the actions in trade remedies is the Anti-Dumping, which is carried out by the KADI. It is to defend and protect the Indonesian domestic industries from dumping practices. This research seeks to answer two problems. First, how is the implementation of Anti-Dumping action by the Indonesian Government on Chinese products during the Covid-19 pandemic? Second, what are the challenges in implementing the Anti-Dumping action on Chinese products during the Covid-19 pandemic in Indonesia?

1.3. Method

This article adopts a normative approach by identifying and examining relevant laws and regulations concerning anti-dumping action in Indonesia, as well as the outcome of the research, assessment, and other references related to this issue. It employs the statute approach by analyzing relevant legal arrangements in anti-dumping. All data collected is then processed by

⁸ Ekonomi, "Indonesia Perlu Siapkan Bukti Kuat atas Aksi Dumping China," <https://ekonomi.bisnis.com/read/20200218/12/1203153/indonesia-perlu-siapkan-bukti-kuat-atas-aksi-dumping-china>

⁹ WTO, "Trade Costs in the Time of Global Pandemic, Information Note," https://www.wto.org/english/tratop_e/covid19_e/trade_costs_report_e.pdf.

¹⁰ ASEAN Policy Brief, "Trade Measures in the Time of COVID-19: The Case of ASEAN," July, 3th 2020, 1.

¹¹ Indonesia Ministry of Industry, "Jaga Ketahanan Industri, Kemenperin Siap Evaluasi Kebijakan Saat Pandemi," <https://www.kemenperin.go.id/artikel/22023/Jaga-Ketahanan-Industri,-Kemenperin-Siap-Evaluasi-Kebijakan-Saat-Pandemi>.

¹² Kiichiro Fukasaku, "What the Covid-19 crisis means for th WTO trade system," Cover Story 6 of Japan Spotlight, July/August 2020, 30.

¹³ WTO, "Briefing note: Anti-dumping, Countervailing and Safeguards," https://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_adp_e.htm

using qualitative methods and the finding is descriptively explained. This paper begins by outlining the presence of dumping action including its definition and aims. This paper then explains some laws and regulations that govern anti-dumping and analyzes whether its action can be conducted in the Covid-19 pandemic.

1.4. Theoretical Framework

Anti-dumping is an action against dumping where a material injury occurs to the competing domestic industries. This action is conducted through the government agency in the country after the government investigated the import products.¹⁴ Generally, dumping refers to a situation of international price discrimination, where a product is sold in a lower price in the importing country rather than in the exporting country.¹⁵ Dumping can take the form of selling at a loss. Many countries' laws define sales below cost as sales of a product at prices less than the cost of production.¹⁶

According to Article 2.1 of the Anti-Dumping Agreement, a product is considered dumped if it is introduced into the commerce of another country at a price less than its normal value. The component of dumping¹⁷ is a product to be considered as being dumped, *i.e.*, inserted into another country's commerce at a lower price than its standard value, if the price of the exported product is below the comparable price in usual trade, for the like product when destined for consumption in the exporting country.¹⁸

To prove the existence of dumping, there must be a material injury in the domestic country. Based on Article 3 of the Anti-Dumping Agreement, material injury is damage or threat of material itself or its problem retardation of the establishment goods market domestic.¹⁹ Furthermore, Article 3.7 of the Anti-Dumping Agreement explains that the purpose of willpower material injury is primarily based totally on statistics and now no longer simply on the allegation, conjecture, or remote possibility.

According to Article VI of the GATT 1994 and the Anti-Dumping Agreement, a state may enforce anti-dumping action if the conditions outlined below are met:

- a) Dumping is happening;

¹⁴ Article 1(1) of the Government Regulation No. 34 of 2011 concerning Anti-Dumping, Countervailing and Safeguard Measures.

¹⁵ WTO, Technical Information on anti-dumping, *loc.cit.*

¹⁶ Mitsuo Matsushita, Thomas J. Schoenbaum, Petros C. Mavroidis, Michael Hahn. *The World Trade Organization Law, Practice, and Policy* (New York: Oxford University Press, 2015), 376.

¹⁷ Peter Van den Bossche. *The Law and Policy World Trade Organization, Text, Cases, and Materials* (Cambridge: Cambridge University Press, 2010), 513.

¹⁸ SICE, "Dictionary of Trade Terms," http://www.sice.oas.org/dictionary/SACD_e.asp

¹⁹ See WTO, "Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade 1994," https://www.wto.org/english/tratop_e/adp_e/antidum2_e.htm.

- b) Domestic industries are struggling with material injury of the like products²⁰ production from the importing country; and
- c) There is a causal link between import products and material injury in the domestic industries that produce like products.²¹

To determine whether a product is dumped, the anti-dumping authority must determine two things between the normal value and export prices.²² To compare the standard value and the export price is not a simple task. To be compared fairly, the standard value and the export price must be reached at the same “level of trade” or at levels as close as possible.²³

Although anti-dumping is one of unfair trade, the WTO permits it as an instrument for the protection of domestic industries on particular goods from abroad.²⁴ This policy could be applied after investigating and determining by the government in the country. Under the Anti-Dumping Agreement, the anti-dumping has been occurring if the domestic industries experiences cause material injury because the price of goods from importing product is less whether that goods price sold in exporting country.²⁵

If any other factors emerge in determining dumping product, the anti-dumping authorities must also consider any recognized factors that cause injury to domestic industries while considering the causal link between import products and material injury in the case.

2. RESULT AND ANALYSIS

2.1. The Indonesian Policies in Implementing the Anti-Dumping Action during the Covid-19 Pandemic

2.1.1 Regulation

Since the Covid-19 pandemic, the international trade system has dropped down from 13% to 32% in 2020 according to a WTO document.²⁶ To control this condition, the WTO issued reports to respond to the Covid-19 pandemic in world trade. The World Bank as an international institution has a connection with the WTO and strives to solve the effect of this pandemic on the world’s financial system.²⁷

²⁰ *Ibid.*

²¹ *Ibid.*

²² Bruce A. Blonigen and Thomas J. Prusa, “*Dumping and Anti-Dumping Duties*,” National Bureau of Economic Research, Working Paper 21573

²³ *Ibid.*, 383.

²⁴ Sherzod Shadikhodjaev, *loc.cit.*

²⁵ *Ibid.*

²⁶ World Bank Group, “Trade and the Covid-19 Pandemic Guidance Note Managing Risk and Facilitating Trade in the Covid-19 Pandemic,” Report on April, 2020, <https://documents1.worldbank.org/curated/en/751981585606039541/pdf/Trade-and-COVID-19-Guidance-Note-Managing-Risk-and-Facilitating-Trade-in-the-COVID-19-Pandemic.pdf>.

²⁷ *Ibid.*

The World Bank has launched a guidance notice of trade policies in reaction to the Covid-19 pandemic.²⁸ The information encourages every state to reduce the regulations for the exchange of necessary clinical items and foods and put off the requirements for applications, licenses, and lots others. This is the form of enforcement of punitive import duties, cancelation of Generalized System of Preferences advantages, and renegotiation of unfastened alternate agreements in some countries.²⁹ It further pushes them into useful resource exporters to maintain jobs and alternate overseas earnings and contribute to macroeconomic insurance efforts to protect the economic machine from the downturn induced by the Covid-19 pandemic.³⁰

Alongside its worrying consequence on human safety, the Covid-19 pandemic has a possible slowdown impact on the international economy, including Indonesia. The fast spread of the Covid-19 pandemic and the action taken by the GoI has some significant consequences for the world's major economies.³¹ The GoI has been continuing to make some strategic trade moves against the Covid-19 pandemic in the country.³² The Indonesian Ministry of Trade also takes various strategic steps with guidelines based on the Presidential Decree of Indonesia regarding Covid-19.³³

In general, Law No.7 of 2014 concerning Trade (Indonesian Trade Law) regulates the issue of dumping. It mentions that the Government, through the Minister of Trade, sets policy and security protection of Commerce that among others shall include defense of the alleged dumping and/or subsidizing the export of national goods and imposition of anti-dumping measures or actions to address the benefits of unfair trade practices.³⁴ Further, the Indonesian Trade Law determines that in case of import products at prices lower than the normal value which causes harm or threat of harm to the domestic industry related or inhibits the development of related industries in the country, the GoI must take anti-dumping measures to eliminate or reduce such loss or threat of loss or barriers.³⁵ This anti-dumping measure may include the imposition of anti-dumping duties that shall be determined by the Minister of Finance, based on the proposal of the Minister of Trade.³⁶

The next legal basis for implementing the anti-dumping action in Indonesia is Government Regulation No. 34 of 2011 concerning Anti-

²⁸ *Ibid.*

²⁹ Agneshwar Sen (Associate Partner, Tax and Economic Policy Group, EY India), "Trade policy scenario in post The Covid-19 Pandemic era" June, 2020, 10.

³⁰ *Ibid.*

³¹ UN ECLAC, "The effects of the coronavirus disease (The Covid-19 Pandemic) pandemic on international trade and logistics," 2.

³² PressRelease.id, "Mendag Jalankan Langkah Strategis Bidang Perdagangan di Masa Pandemi Covid-19," <https://pressrelease.kontan.co.id/release/mendag-jalankan-langkah-strategis-bidang-perdagangan-di-masa-pandemi-covid-19>

³³ Dewa Gede Pradnya Yustiawan, "Perlindungan Industri Dalam Negeri dari Praktik Dumping," *Jurnal Analisis Hukum* 1, no. 1 (2018): 178.

³⁴ Law No.7 of 2014 concerning Trade, Art. 67.

³⁵ *Ibid.*, Art. 70 (1).

³⁶ *Ibid.*, Art. 70 (2) and (3).

Dumping, Countervailing, and Safeguard Action (Government Regulation No. 34 of 2011). The Indonesia Minister of Trade as representative of KADI during the Covid-19 pandemic has not issued a specific regulation on anti-dumping action. Therefore, KADI keeps using the existing rule to implement anti-dumping action.

Based on Article 94 of the Government Regulation No. 34 of 2011, KADI performs the functions of the investigation into the truth of allegations of dumping, the existence of the losses suffered by the applicant, and the causal link between dumping and losses experienced by domestic industries.³⁷ The procedure for the investigation of anti-dumping during the Covid-19 pandemic in Indonesia has no significant change because the KADI continues to carry out the usual investigative procedures following the Government Regulation No. 34 of 2011 and the Anti-Dumping Agreement.³⁸

However, regulation of the Anti-Dumping in factuality needs a national potential law to protect domestic industries from dumping, which is becoming a significant consequence in international trade competition.³⁹ Therefore, defeating dumping practices requires the application of both international and national anti-dumping provisions.⁴⁰

2.1.2. Trade Remedies

The Covid-19 pandemic has performed trade challenges globally. The international trading system was already subject to new restrictions and distortions, from tariff increases among major traders to significant government support in key sectors.⁴¹ One of the countries affected by the pandemic, The GoI, was using trade remedies to control the trade sector in the domestic industries.

Trade remedies are one of the policies applied by the GoI to protect domestic industries in Indonesia. This policy is a term used by the government to apply a measure in specific cases or situations in international trade,⁴² as the WTO allows members to enforce trade remedies

³⁷ KADI staff, "The Implementation of Anti-Dumping measures In Indonesia Toward The Chinese Products," Interview by Andi Putri Amanda, interview by email, May 28, 2021.

³⁸ Ivan Rinanda Panggar Besi (Directorate General of Security of Trade of Indonesian Ministry of Trade), "Measurer on Chinese Products in Indonesia during the Covid-19 Pandemic: Why was Anti-Dumping Action Imposed?," Interview by Andi Putri Amanda, online interview by Zoom, April 20, 2021.

³⁹ Dewi Anggaraini, "Prevention of Dumping Practice in Asean Chinese Free Trade Area Regarding Government Regulation Number 34 Year 2011," *Jurnal Cita Hukum* 5, no. 1 (2017): 142.

⁴⁰ *Ibid.*

⁴¹ OECD, "COVID-19 and international trade: Issues and actions," <https://www.oecd.org/coronavirus/policy-responses/covid-19-and-international-trade-issues-and-actions-494da2fa/>

⁴² Trade Knowledge Exchange, "Trade Remedies: Why Do We Need Them and How Do They Work?," <https://www.trade-knowledge.net/knowledge/trade-remedies-why-do-we-need-them-and-how-do-they-work/>

or trade defense action for imports in order to protect their domestic industries from dumping.⁴³

Indonesia uses trade remedies as a legal measure⁴⁴ to protect the domestic industries from losses.⁴⁵ The threat of losing is an effect of unfair trade practices or a surge in imports and unexpected developments.⁴⁶ In the implementation, the GoI can impose the form of Anti-Dumping Import Duty (*Bea Masuk Anti-Dumping/BMAD*), or Import Duty Borne by the Government (*Bea Masuk Ditanggung Pemerintah/BMDP*), or Import Duty (*Bea Masuk Impor/BMI*).⁴⁷

Anti-dumping action is expected to succeed in providing limiting exports of Chinese products. That will be improved and competitive goods in the domestic industries on the performance.⁴⁸ It is different from other lines of trade protection from the WTO rules due to the fact that anti-dumping action is legal in the WTO and free from the non-discrimination clause, as an action to remedies if there has deemed to be unfair trade practice.⁴⁹ However, during Covid-19, the GoI arranged the imposing of Anti-Dumping that simply targeted specific imports. The investigation of products has precisely examined the effects of these trade policies on the targeted sectors.⁵⁰

2.2. The Challenges in Implementing the Anti-Dumping Action during Covid-19 pandemic in Indonesia

The Covid-19 pandemic has caused fears since the virus spreads quickly all over the globe, putting down the health world system under pressure.⁵¹ The pandemic became a barrier to supplying medicines to the public, and it affects the health, social and economic living of people in the world,⁵² and the government's major concern in preventing the pandemic's spread is the transportation sector's limitations.⁵³ Indonesia is one of the

⁴³ WTO, Briefing note: Anti-dumping, Countervailing and safeguards, *loc.cit.*

⁴⁴ Blonigen and Prusa, *op.cit.*,1.

⁴⁵ VOI, "During the Paglebuk of COVID-19 Pandemic, Indonesia Was Accused of 'Cheating' in Its Export Activities for 16 Times," <https://voi.id/en/teknologi/6946/during-the-covid-19-pandemic-indonesia-was-accused-of-cheating-in-its-export-activities-for-16-times>.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Liza Jabbour, *et.al.*, "The good, the bad and the ugly: Chinese imports, European Union anti-dumping measures and firm performance," *Journal of International Economics* 117, (2019): 13.

⁴⁹ Blonigen and Prusa, *op.cit.*,1.

⁵⁰ *Ibid.*

⁵¹ UNCTAD, "The Trade Impact of Coronavirus (THE COVID-19 PANDEMIC) Epidemic," Report on March, 4th 2020.

⁵² Lukasz Gruszczynsk, "The Covid-19 pandemic Pandemic and International Trade: Temporary Turbulence or Paradigm Shift?," *European Journal of Risk Regulation* 11, no. 2 (2020): 339.

⁵³ Kukuh Fadli Prasetyo, "Identifying Social Contexts Upon The Annual Homecoming Prohibition Due to The Covid-19 Outbreak," *Udayana Journal of Law and Culture* 5, no. 1 (2021): 22.

countries that adopt various ways to face the Covid-19 challenges that affect the domestic industries.

Firstly, the GoI has issued the WFH policy, where workers are allowed to fulfill the essential responsibilities of the job from home using information and communications technology (ICT).⁵⁴ This was issued as an alternative for the state's civil servants to minimize the spread of Covid-19.⁵⁵ This policy affects all workers because they are unable to work in the office and have their working hours limited, including the KADI staff who investigate dumping actions on the field.

The Minister of Utilization of the State Apparatus and Bureaucratic Reform has issued three Circular Letters for all State's Civil Apparatus as a guideline in the new normal life, respectively. Basically, these circular letters serve as a guideline for all civil apparatus to adapt to their working hours and system in the covid-19 pandemic. Civil servants must go to work needs to be adjusted by the work system by running the health protocol in daily activities. The adjustment of the work system made the flexibility of the work there is location adjustment, including the implementation of (work from office/WFO) and WFH.⁵⁶

Secondly, the KADI still lack capable human resources to conduct dumping research in the field, which makes the KADI cannot cover all dumping actions that exist in the Indonesian market, so they can only prove some dumping actions,⁵⁷ which caused the anti-dumping instruments and regulations not maximized due to the lack of awareness and understanding of the existence of anti-dumping action.⁵⁸

Thirdly, the GoI provided more support in import duty facilities during the period of the pandemic.⁵⁹ The GoI regulated suspended tax on imported products to implement BMAD on some goods and materials during the Covid-19 pandemic in accordance with Regulation of the Minister of Finance No. 134/PMK.010/2020 concerning the Import Duty borne by Government

⁵⁴ International Labour Organization, "An employers' guide on working from home in response to the outbreak of COVID-19", , Publication on 2020, 5.

⁵⁵ Lina Vyas and Nantapong Butakhieo, "The impact of working from home during COVID-19 on work and life domains: an exploratory study on Hong Kong Policy," *Policy Design and Practice* 4, no. 1 (2021): 64.

⁵⁶ See Circular Letter of Minister of Utilization of the State Apparatus and Bureaucratic Reform No. 19 of 2020 concerning The Adjustment of The State Civil Apparatus Working System in Preventing the Spread of Covid-19 Virus in the Government Agencies Environment, as amended by Circular Letter of Minister of Utilization of the State Apparatus and Bureaucratic Reform No. 34 of 2020; and Circular Letter of Minister of Utilization of the State Apparatus and Bureaucratic Reform No. 58 of 2020 concerning the Employee System of State Civil Apparatus in New Normal Order.

⁵⁷ KADIN, "Begini Penjelasan Kadin Soal Tuduhan Trade Remedies," <https://www.kadin.id/news-event/news-detail/1444/begini-penjelasan-kadin-soal-tuduhan-trade-remedies>.

⁵⁸ Indonesia Anti-Dumping Committee, "Background," <https://kadi.kemendag.go.id/about>

⁵⁹ Global Compliance News, "Indonesia: More support from the Government of Indonesia in the form of import duty facilities in light of the COVID-19 outbreak," <https://www.globalcompliancencnews.com/2020/11/10/indonesia-government-borne-import-duties-in-light-of-covid-1901102020/>

on imported products and materials for producing of products and/or services by Certain Industry and Regulation of Minister of Industry No. 31 of 2020 concerning Guidelines for Implementing the Utilization of Government Borne Import Duties for the Importation of Goods and Materials to Produce Goods and Services in Certain Industries that are affected by the Covid-19 Pandemic. This is a form of enforcement of punitive import duties.⁶⁰ The anti-dumping action has a relation to other policies from the Ministry of Finance and the Ministry of Industry, as the GoI took the initiative to support import duties of certain goods and materials for 33 industrial sectors under the supervision of four directors-general, which was enacted to preserve the supply of raw materials during the Covid-19 pandemic.⁶¹ The imported products should be exempted from receiving since the GoI released lockdown and WFH policies which make the KADI restrained to exercise their responsibilities on the field, and the parties cannot provide more data associated losses suffered. In addition, in the absence of on-the-spot verification, BMDP would be applied if the goods and materials are:⁶²

1. Subject to 0% import duty.
2. Subject to 0% import duty in accordance with international agreement or treaty.
3. Subject to import duties related to anti-dumping, temporary action of anti-dumping, security action, temporary security action, countervailing duties, and retaliation.

2.3 Implementation of Anti-Dumping Action towards the Chinese Products in Indonesia

Traditionally, China is the uppermost target for anti-dumping action to be enforced by the member state of the WTO,⁶³ as announced in March 2020 by KADI, to start the investigation of anti-dumping on Chinese products. During the Covid-19 pandemic, the KADI does not apply policies specific to conducting investigations. However, it will be done with caution for applied BMAD.⁶⁴ and obtained detail by directly posing questions. Even though on-the-spot verification cannot be performed during the Covid-19 pandemic, this is not a problem because the KADI can still make requests for data and information that is expected to be confirmed during the

⁶⁰ Agneshwar Sen, *op.cit.*, 10.

⁶¹ *Ibid*; see also Regulation of Minister of Financial No. 134/PMK.010/2020 on Government Borne Import Duties for the Importation of Goods and Materials to Produce Goods and/or Services in Certain Industries that are Affected by the COVID-19 Pandemic, Art. 6.

⁶² An incentives provided by the government for producers based on imported raw materials to encourage the competitiveness of domestic industries. See Website Admin, "Ada Bea Masuk Ditanggung Pemerintah?," <https://bcmarunda.beacukai.go.id/infografis/ada-bea-masuk-ditanggung-pemerintah/>

⁶³ Abdulkadir Yilmazcan, "The Role of Anti-Dumping in the US-China Trade War," *Article China and WTO Review* 1 (2021): 8.

⁶⁴ Hanna Tasya Zahrani, "Efektivitas Performa Komite Anti Dumping Indonesia Dalam Memberi Perlindungan Hukum Pada Industri Lokal," *Jurnal Kepastian Hukum dan Keadilan* 2, no. 1 (2020): 78.

investigation period. According to Article 6.7 of Anti-Dumping Agreement, which states that “To verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required...” it is not an obligation for the KADI to carry out on-the-spot verification.

The application of the final anti-dumping procedure is pursuant to the WTO-specific mechanism, which includes the following stages and conditions:⁶⁵

1. They were carrying out investigations after a complaint from the affected.
2. Such investigation aims to prove the existence of dumping.
3. Such investigation aims to prove the occurrence of physical damage to the domestic industries that produce a product compete for that dumped product.
4. The damage did not happen because of factors other than dumping. In other words, there must be a causal relationship between dumping and the occurrence of damage.

Before starting the anti-dumping investigation, the GoI has prepared enough evidence to provoke an anti-dumping inquiry into those Chinese products are Lysine and Hot Rolled Coil of other Alloy Steel. After that, the KADI has an issue pre-notification to the Chinese government concerning initiating an anti-dumping investigation of both products. This became knowledgeable how the home industry which declared that the lysine and HRC Alloy Steel product from China became sold with a sizeable fee margin and affected the production of a like product inside the country.⁶⁶ In the investigation, the authorities of the anti-dumping focused on whether there is a lower export price in the domestic country rather than knowing how the lower price performed.⁶⁷

The limit time for investigation of the anti-dumping action will be within twelve months from the decision at the investigation was issued, with a possible extension of up to six months if necessary.⁶⁸ After the investigation issue a final decision, the authorities of Anti-Dumping could be imposing Anti-Dumping Duty. The duration of imposing Anti-Dumping action is generally five years, but that will be revised if the circumstances of the exporters are changing, or the action can be extended to more than five years if the dumping strategy has not been terminated. The Anti-Dumping

⁶⁵ Soheyb Salah Kahlessenane, “Anti-Dumping Regulations and Policies: Some Insights from Algeria,” *Athens Journal of Law* 5, no. 1 (2019): 54.

⁶⁶ Kompas, “Keluhkan Serbuan Baja China, Bos Krakatau Steel Serukan Petisi Anti-dumping,” <https://money.kompas.com/read/2020/02/17/202300226/keluhkan-serbuan-baja-china-bos-krakatau-steel-serukan-petisi-anti-dumping?page=all#page2>

⁶⁷ Chen Yu, “Currency Manipulation and THE WTO Laws: Should the Anti-Dumping Mechanism Be Entirely Dumped?,” *Journal of World Investment & Trade* 20, (2019): 902.

⁶⁸ ANT Lawyers, “Vietnam Investigates and Applies Anti-Dumping Measures on Some Plastic Products from China, Thailand and Malaysia (AD07),” <https://antlawyers.vn/legal-service/vietnam-investigates-and-applies-anti-dumping-measures-on-some-plastic-products-from-china-thailand-and-malaysia-ad07.html>

action takes the form of *ad valorem* duties,⁶⁹ but that depends on specific duties or price undertakings.⁷⁰

Based on Article 1(7) of Government Regulation of Republic Indonesia No. 34 of 2011 and Article 2.2 of the Anti-Dumping Agreement, the KADI will provide evidence comparing the margin prices of import products and domestic products in the proof of Chinese product dumping. For data and information related to export prices, the KADI requested domestic producers via a questionnaire at the time commencement of the investigation. The KADI can carry out dumping margin calculations or prove the occurrence of dumping from foreign steel company.

China is the most aggressive in terms of dumping. During the Covid-19 pandemic, the GoI is expected to continue monitoring any imported products from China. China carried out a trading recovery in the first Covid-19 case in Indonesia. This makes imported products increase in Indonesia, allowing the lack of competitiveness of similar products made in the domestic country.

2.3.1. Lysine

Lysine is a compound that forms protein, which is commonly used for the production of animal feed.⁷¹ The total import of Lysine in Indonesia on 2020 is 37.336.279 net weight;⁷² the number is lower than on 2019 from 39.398.212 net weight, during the first investigation.

Table 1 Description of Lysine

Description	Quantity (MT)			Trend %	Market Share %			Trend %
	P1	P2	P3		P1	P2	P3	
China	18.707	30.836	37.070	40,8	72,6	95,6	98,9	16,7
Import from another country	7.045	1.414	418	(75,6)	27,4	4,4	1,1	(79,8)
Total import	25.752	32.250	37.488	20,7	100	100	100	-

Source: The Indonesian Anti-Dumping Committee, 2021.

In the evidence of the Anti-Dumping investigation, the GoI has prepared enough evidence to provoke an Anti-Dumping inquiry into those Chinese products is Lysine. After that, the KADI has an issue pre-notification to the Chinese government concerning initiating an Anti-

⁶⁹ An ad valorem tax is a tax based on the assessed value of an item, such as real estate or personal property. The most common ad valorem taxes are property taxes levied on real estate. However, ad valorem taxes may also extend to a number of tax applications, such as import duty taxes on goods from abroad. See Investopedia, "Ad Valorem Tax," <https://www.investopedia.com/terms/a/advaloremtax.asp>

⁷⁰ Liza Jabbour, *et.al.*, *op.cit.*, 3.

⁷¹ IDN Financials, "Anti-Dumping Committee starts investigation on Chinese imported lysine," <https://www.idnfinancials.com/news/32887/anti-dumping-committee-starts-investigationchinese-imported-lysine>

⁷² Indonesia Ministry of Trade, "Siaran Pers KADI Mulai Penyelidikan Antidumping Barang Impor Lysine Asal Tiongkok," March, 24th 2020.

Dumping investigation of Chinese lysine. This is conducted with the aid of early proof and a complete report approximately the existence of dumping of goods, losses, a causal link among dumping, and losses suffered through the applicant.⁷³

2.3.2. Hot Rolled Coil of other Alloy Steel

Indonesia is a high-level consumer of steel in the domestic market. The local Indonesian producers cannot fulfill the steel in over demand in the upstream, intermediate, and downstream.⁷⁴ Hot Rolled Coil of other Alloy steel is a part generation of steel. In the calculated on the period investigation HRC Steel by KADI until 2020 is 461.548 tons with Tarif Post 7225.30.90 from China. To determine an Anti-Dumping action, KADI may conduct an investigation for 12 months, and if necessary, it can be extended up to 18 months.⁷⁵

Table 2 Description of HRC Alloy Steel

Country	Unit	PI	P2	PP	Trend%
China	MT	298.745	358.193	461.458	24
Another Country	MT	152.928	116.100	119.607	(12)
Total Import	MT	451.674	501.293	581.155	13

Source: *The Indonesia Anti-Dumping Committee, 2021.*

The imposition *Bea Masuk Anti-Dumping* (BMAD) of alloy steel is an important challenge to the national industry because the MFN import duty rate for steel merchandise in Indonesia has largely been reduced (even as much as zero percent).⁷⁶ This is due to a Free Trade Agreement (FTA) between Indonesia and major steel-producing countries, one of which is China, which has reduced the MFN Import Duty to 0%.⁷⁷

Indonesia needs to limit the use of imported steel, which causes the Chinese steel sold in Indonesia is with the cheap price. It can threaten the national steel industry. The GoI must be effective in encouraging local producers to increase steel from local producers on conducting government projects.

2.4 Chinese Government Responding to Indonesian Anti-Dumping Action

After the announcement that the KADI will investigate the alleged Chinese product, then it takes pre-notification for the representative accused Chinese Government in Indonesia regarding the receipt of application of Anti-Dumping investigation of Lysine and HRC Alloy Steel

⁷³ Anita Kamilah, "Law Protection For Domestic Industries Due to Dumping Practice," *Jurnal Dinamika Hukum* 15, no. 3 (2015): 308.

⁷⁴ Lily Pratiwi, "Imposition of Anti-Dumping Duty (BMAD) toward Chinese Cold Rolled Coil/Sheet (CRS/S) Products," *Indonesia Law Review* 3, no. 2, (2013): 152.

⁷⁵ Indonesian Ministry of Trade, "KADI Memulai Penyelidikan Anti Dumping Atas Barang Impor Hot Rolled Coil of Other Alloy Steel", March, 3th 2020.

⁷⁶ Kompas, *loc.cit.*

⁷⁷ *Ibid.*

products imported from China. Based on Article 3 of the Government Regulation No. 34 of 2011, it is stated that BMAD will be imposed after an investigation by the KADI is conducted, the investigation may be carried out based on a request or based on the initiative of the KADI.

From the KADI notification, the representative of the Trade Remedy and Investigation Bureau of the Ministry of Commerce of the People's Republic of China (TRB) stated that Anti-Dumping investigation must determine Lysine and HRC Alloy steel is Like Product in production.⁷⁸ The Government of China asked for a discussion with Indonesia relating to the Adjustments of Value Added Tax (VAT) rebates of Export Price Calculation in Anti-Dumping. The KADI recognized the export rebates received by the Chinese companies as a return of VAT levied upon exportation and regarded it as a downward adjustment to the export price, which leads to an irrationally high dumping margin. Later, many Chinese companies responded to the issue and submitted supplemental evidence as the KADI request.⁷⁹

The Chinese Government sincerely expects KADI to consider the above opinions in the procedures of these two cases and future Anti-Dumping investigations against China, provided that there are still confusion. The Chinese Government is also willing to continue the communications in any appropriate manner TRB avails itself of this opportunity to renew to KADI the assurances of its highest considerations.⁸⁰

The increase of imports products in dumping has an impact on volume both in absolute and relative terms as well as the impact of prices on Indonesia in the form of price undercutting and depression due to unfair competition of the import goods from China. Indonesia suffered material losses caused by imported goods that come from China. Based on the final investigation report, the margin dumping of Lysine products is 6.02% to 33.20% and HRC Alloy Steel's margin is from 7,2% to 50,2%.⁸¹

After the KADI concluded that there was dumping in the Indonesian market for Chinese products, it notified the relevant parties, including the WTO Secretariat and the Chinese government.⁸² Later, the Government of China accept the KADI Final Report and it did not bring the case to the WTO Dispute Settlement Body.

⁷⁸ Indonesian Anti-Dumping Committee, "Final Report of Anti-Dumping Investigation on Hot Rolled Coil Of Other Alloy Steel (HRC Alloy) Import from China, Tarrif Post No: 7225.30.90," 25-27.

⁷⁹ Indonesian Anti-Dumping Committee, "Final Report of Anti-Dumping Investigation on Lysine Import from China," 19-21.

⁸⁰ The Indonesian Anti-Dumping Committee, "Final Report of Anti-Dumping Investigation on Hot Rolled Coil Of Other Alloy Steel (HRC Alloy) Import from China, Tarrif Post No: 7225.30.90," *op.cit.*, 39.

⁸¹ *Ibid.*

⁸² *Ibid.*

3. CONCLUSION

As a WTO member state, Indonesia issued numerous policies in addressing the Covid-19 pandemic. One of the policies is anti-dumping action taken by the Ministry of Trade that aims at protecting domestic industry from injury. Since no specific legislation regarding anti-dumping is created during the Covid-19 pandemic, KADI continues using the existing rule to implement anti-dumping measures. China is Indonesia's largest importer and a country that takes aggressive anti-dumping measures. Since the Covid-19 pandemic, increased oversight of Chinese products entering Indonesia urge the bigger role of KADI. KADI's scientific investigation succeed in proving the causal link between certain imported Chinese products, namely Lysine and Hot Rolled Coil of another alloy Steel (HRC Alloy Steel), and the injury of Indonesian domestic industries.

There are some challenges faced by Indonesia in preventing dumping during the pandemic. First, the policy of WFH makes the task of the apparatus cannot be implemented optimally. Second, KADI still lacks capable human resources to conduct dumping research in the field. As a result, KADI cannot discover all dumping actions that occur in the Indonesian market, because they can only prove some dumping actions. Third, the decision of the Minister of Finance to suspend import duties on imported products seems to be problematic.

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